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CONCORD, N.H.

Mr. William E. Ellery, Commissioner  
Department of Labor  
State House  
Concord, New Hampshire

Dear Sir:

*AC* You have inquired as to the proper parties for instituting claims and suits under the Workmen's Compensation Law, and more specifically, if death results from a compensable injury, may the administrator of the decedent's estate maintain the claim or suit for the benefit of the dependents.

*GR.* Under Workmen's Compensation Laws, the rights of dependents are separate and distinct from the rights of the employee. The employee's rights to compensation accrue at the time of the injury. The dependent has no compensable rights while the injured employee is alive. Upon the death of the employee a new and original right arises from his death. That is, a right of his dependents to compensation for his death as provided by the Workmen's Compensation Law, which also defines dependency. With this as a premise, it is impossible to see how an administrator, as the personal representative of the deceased, can have any interest whatsoever in the claims for death benefits of the dependents. The administrator, as personal representatives of the deceased, can only enforce claims which the deceased could have enforced in his lifetime. Under the Workmen's Compensation Law the employee has no claim for death benefits.

The conclusions reached in the preceding paragraph may be further substantiated by reference to Laws of 1947, chapter 263, section 20, which provides:

"If death results from the injury, the employer shall pay to, or for the dependent or dependents of the deceased employee, as defined in section 1, . . ."

chapter:

And further in section 42 of the same

"Claims for compensation under the provisions of this chapter shall not be assignable; and the compensation and claims therefor shall be exempt from all claims or creditors, except as herein provided . . ."

I quote from 58 Am.Jur. 689.

"A right to compensation conferred by statute upon the surviving relatives or dependents of a deceased employee, on account of his death, is ordinarily treated as separate and distinct from the right to compensation vested in such employee by reason of the injury. The amount payable to the death beneficiaries never becomes a part of the estate of the deceased, and is not liable for his debts, but is the exclusive property of the beneficiaries."

71 Corpus Juris, page 528, states,

" . . . but dependency must be shown as required by the statute, and it is not the purpose of a law that makes provisions for dependents to enrich persons who were strangers to the deceased, . . . or to create an insurance fund which would form a part of deceased's estate."

A cursory examination of the case law discloses that in the few instances in which this question has been presented to a court, the question was disposed of in a very perfunctory manner.

In 97 So. 2nd 121, Alabama, the court said that the personal representative of the deceased is not the proper party to maintain a suit under the Workmen's Compensation Law to recover on account of the death of the employee.

198 So. 656, a Louisiana case stated that only the employee or his dependents have the right to enforce liability for compensation.

As Workmen's Compensation Laws are mainly for the protection of the injured employee and his dependents, upon the death of the employee, the right of action under the law is then vested in the dependents. If there are no dependents, there can be no claim by the employee's estate. This personal right of the dependents has no relation to

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ATTORNEY-GENERAL

Mr. William H. Riley, Commissioner -2-

the deceased's estate. Thus any releases or payments of death benefits must come from the dependents themselves.

Very truly yours,

Arthur E. Bean, Jr.  
Law Assistant

AEB, Jr/T  
cc: Charles Hartnett